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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,866	07/27/2001	Michael L. Davis	13768.67.16.2	1589
7590	05/05/2004			EXAMINER
Workman Nydegger & Seeley			SHRADER, LAWRENCE J	
1000 Eagle Gate Tower				
60 E. South Temple			ART UNIT	PAPER NUMBER
Salt Lake City, UT 84111			2124	
DATE MAILED: 05/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

XO

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/916,866	DAVIS ET AL.	
	<b>Examiner</b> Lawrence Shrader	<b>Art Unit</b> 2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 7/27/2001; 11/15/2001.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-34 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date #2, <u>11/15/2001</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 11/15/2001 is acknowledged and is being considered by the examiner.

### ***Oath/Declaration***

2. The declaration filed on 7/27/2001 is acknowledged. However, the Applicant must disclose information material to patentability under 37 C.F.R. 1.56, not a portion of 37 C.F.R. 1.56 (in this case 1.56a). See 37 C.F.R. 1.61, which states the declaration must "state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56." A new oath/declaration is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 7; 8 – 13; 14 – 21; 22, 23, and 25 – 27 are rejected under 35 U.S.C. 102(b) as being anticipated by art of record Davis et al., U.S. Patent 5,742,829 (hereinafter referred to as Davis).

**In regard to claim 1:**

Davis discloses a data processing system having software for installation comprising:

*"a first computer configured to receive the software, the first computer being newly added to the data processing system; and"*

Davis discloses a first computer configured to receive software (column 2, lines 15 – 66).

It is disclosed that the server computer automatically determines when to install software on the client (a first computer). If a client computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate.

*"a second computer configured to automatically determine when the first computer is added to the data processing system, the second computer being configured to control the installation of the software onto the first computer when it is determined to install the software onto the first computer and is heterogeneous with respect to the first computer."*

Davis discloses a first computer configured to receive software (column 2, lines 15 – 66).

It is disclosed that the server computer automatically determines when to install software on the client (a first computer). If a client computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate. The Davis patent discloses heterogeneous client computer systems (Abstract).

**In regard to claim 2, incorporating the rejection of claim 1:**

*"...wherein the software is a version of a program, and wherein the second computer includes a detection component for detecting when the version of the program is outdated and for installing a new version of the program onto the first computer."*

See column 2, lines 32 – 44.

**In regard to claim 3, incorporating the rejection of claim 1:**

*"...wherein the second computer includes a detection component for detecting when a third computer is added to the data processing system and for automatically installing the software onto the third computer in response to the addition of the third computer."*

The Abstract of Davis discloses a system of multiple client computers that may be updated (see also column 5, line 31 to column 6, line 9).

**In regard to claim 4, incorporating the rejection of claim 1:**

*"...wherein the first computer has an associated first natural language and wherein the second computer has an associated natural language."*

See Abstract and column 2, lines 15 – 31; lines 45 – 67.

**In regard to claim 5, incorporating the rejection of claim 1:**

*"...wherein the first computer executes an operating system of a first type and wherein the second computer executes an operating system of a second type."*

See the Abstract.

**In regard to claim 6, incorporating the rejection of claim 1:**

*"...wherein the first computer has a processor of a first type and wherein the second computer has a processor of a second type."*

See the Abstract.

**In regard to claim 7, incorporating the rejection of claim 1:**

*"...wherein the first computer executes a network operating system of a first type and wherein the second computer executes a network operating system of a second type."*

See the Abstract.

**In regard to claim 8:**

*"a first computer having an associated natural language and a processor running an operating system, the first computer being newly added to the data processing system;"*

Davis discloses a first computer configured to receive software (column 2, lines 15 – 66).

It is disclosed that the server computer automatically determines when to install software on the client (a first computer). If a client computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate.

*"a second computer, heterogeneous with respect to the first computer, having a first component configured to store editions of software, a second component configured to automatically determine the natural language associated with the first computer, the operating system running on the first computer and the type of processor in the first computer and a third component configured to control installation of one edition of the software onto the first computer that is particular to the type of processor in the first computer, the operating system running on the first computer and the natural language associated with the first computer, wherein the second computer installs the edition of the software by utilizing commands that are suitable for the operating system running on the first computer."*

Davis discloses a first computer configured to receive software from a second (column 2, lines 15 – 66). It is disclosed that the server computer automatically determines when to install software on the client (a first computer). If a client computer requires an upgrade the server will upgrade it.

**In regard to claim 9, incorporating the rejection of claim 8:**

*"...wherein the second computer is configured to start the software."*

See column 2, lines 45 – 67; column 16, lines 24 – 27.

**In regard to claim 10, incorporating the rejection of claim 8:**

*"...wherein the first computer is associated with a first site and the second computer is associated with a second site."*

See Figure 1 and column 5, lines 31 – 46.

**In regard to claim 11, incorporating the rejection of claim 10:**

*"...wherein the second computer manages the second site."*

See column 5, lines 47 – 56.

**In regard to claim 12, incorporating the rejection of claim 8:**

*"...wherein the second computer comprises a helper server, the helper server being configured to install the software on the first computer."*

See column 5, lines 47 – 67.

**In regard to claim 13, incorporating the rejection of claim 8:**

*"...wherein the second computer comprises a detection component configured to detect the first computer."*

When the first computer logs on to the second computer, the second computer detects the first computer (column 2, lines 50 – 53).

**In regard to claim 14:**

*"a first computer configured to receive one or more application programs, the first computer forming part of a first site comprising a plurality of computers connected together by a first area network;"*

See Davis Figures 1 – 3 and column 8 lines 39 – 45 for networking functionality.

*"a second computer associated with a second site comprising a plurality of computers connected together by a second area network, the second computer being configured to store the one or more application programs and manage the delivery of the one or more software to the first computer by automatically determining when the first computer is added to the data processing system and controlling the installation of the software onto the first computer when it is determined by the second computer to install the software onto the first computer."*

See Davis Figures 1 – 3 and column 8 lines 39 – 45 for networking functionality. Also, Davis discloses a first computer configured to receive software (column 2, lines 15 – 66). It is disclosed that the server computer automatically determines when to install software on the client (a first computer). If a client computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate.

**In regard to claim 15, incorporating the rejection of claim 14:**

*"...wherein the second computer is configured to start the software."*

See column 2, lines 45 – 67; column 16, lines 24 – 27.

**In regard to claim 16, incorporating the rejection of claim 14:**

*"... wherein the second computer comprises a helper server, the helper server being configured to install the software on the first computer."*

See Davis column 5, lines 47 – 67.

**In regard to claim 17, incorporating the rejection of claim 14:**

*“...wherein the second computer comprises a detection component configured to detect the first computer.”*

When the first computer logs on to the second computer, the second computer detects the first computer (column 2, lines 50 – 53).

**In regard to claim 18, incorporating the rejection of claim 14:**

*“...wherein the first computer has an associated first natural language and wherein the second computer has an associated natural language.”*

See the Abstract for natural language associations.

**In regard to claim 19, incorporating the rejection of claim 14:**

*“...wherein the first computer executes an operating system of a first type and wherein the second computer executes all operating system of a second type.”*

See the Abstract.

**In regard to claim 20, incorporating the rejection of claim 14:**

*“...wherein the first computer has a processor of a first type and wherein the second computer has a processor of a second type.”*

See the Abstract.

**In regard to claim 21, incorporating the rejection of claim 14:**

*“...wherein the first computer executes a network operating system of a first type and wherein the second computer executes a network operating system of a second type.”*

See column 8, lines 39 – 45.

**In regard to claim 22:**

*"automatically determining when a first computer is added to the data processing system, the first computer comprising a natural language and a processor running an operating system;"*

*"identifying a stored edition of software, at a second computer, that is particular to the natural language, the processor, and the functioning operating system of the first computer;"*

Davis discloses a first computer configured to receive software (column 2, lines 15 – 66).

It is disclosed that the server (second) computer automatically determines when to install software on the client (a first computer) that is stored in the second computer. If a client computer requires an upgrade the server will upgrade it. This condition is inherent in the computer whether it is new or old since every computer must have software to operate.

*"identifying stored preferences controlling installing the stored edition of the software onto the first computer; and"*

See Davis column 1, lines 53 – 65 and column 12, lines 32 – 45.

*"automatically installing only the edition of the software onto the first computer, directly from the second computer, utilizing commands that are suitable for the functioning operating system running on the first computer and based upon the stored preferences."*

See Davis column 1, lines 53 – 65; column 11, lines 30 – 67; and column 12, lines 32 – 45.

**In regard to claim 23, incorporating the rejection of claim 22:**

*"...further comprising, automatically starting, by the second computer, the installed edition of the software on the first computer."*

See column 2, lines 45 – 67; column 16, lines 24 – 27.

**In regard to claim 25, incorporating the rejection of claim 22:**

*"...wherein determining when the first computer is added to the data processing system occurs periodically."*

See the Davis Abstract.

**In regard to claim 26, incorporating the rejection of claim 22:**

*"...wherein determining, when the first computer is added to the data processing system occurs in accordance with a predetermined amount of time set by an administrator of the data processing system."*

Davis discloses response to input of the administrator (column 10, lines 26 – 28).

**In regard to claim 27, incorporating the rejection of claim 22:**

*"...wherein determining when the first computer is added to the data processing system occurs in accordance with an instruction of an administrator."*

Davis discloses response to input of the administrator (column 10, lines 26 – 28).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2124

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al., U.S. Patent 5,742,829 as applied to claim 22 above, in view of Sakanishi et al., U.S. Patent 6,678,888.

**In regard to claim 24, incorporating the rejection of claim 22:**

*"...further comprising delivering the edition of the software to a third computer, the third computer installing only the edition of the software onto the first computer directly from the third computer utilizing commands that are suitable for the operating system running on the first computer and based upon the stored preferences."*

Davis discloses a first computer configured to receive software (column 2, lines 15 – 66).

It is disclosed that the server (second) computer automatically determines when to install software on the client (a first computer) that is stored in the second computer, but does not disclose a third computer that installs software to the first computer. However, Sakanishi discloses a third computer wherein the software is distributed to a first computer via a third computer (Abstract; column 17, lines 35 – 58). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the teaching of Davis, which automatically installs software on heterogeneous clients, with the distributed software updating system as taught by Sakanishi, because the combination provides an efficient means to provide software to a system while simplifying the work of the user/administrator by reducing the update time as taught by Sakanishi at column 2, lines 43 – 48.

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al., U.S. Patent 5,742,829 in view of Selitrennikoff et al., U.S. Patent 6,209,089 (hereinafter referred to as Selitrennikoff).

**In regard to claim 28:**

*"a step for determining, remote from the first computer, when the first computer is added to the data processing system, the first computer comprising a natural language and a processor running a functioning operating system; "*

Davis discloses software installation on a first computer comprising a natural language and a processor running a functional operating system (Abstract), and also detects when a computer logs on and updates the software if necessary regardless if the first computer is new or not (column 2, lines 15 – 66). However, Selitrennikoff explicitly discloses during a preliminary connection, a system that identifies new hardware components on a client and reports the configuration to the server in order to configure the client software properly (Abstract; column 51 line 51, to column 16, line 6). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the teaching of Davis, which automatically installs software on heterogeneous clients, with the explicit checking of new client hardware as taught by Selitrennikoff, because the combination allows the Davis invention to determine specifically if a new client exists allowing client computers to be booted and automatically reconfigured regardless of changes made to the hardware components as taught by Selitrennikoff at column 2, lines 54 – 57.

*"a step for receiving at the first computer an edition of software that is particular to the natural language, the processor, and the operating system of the first computer; "*

See the Davis Abstract.

*"a step for automatically installing onto the first computer only the edition of the software, under the control of a second computer, utilizing commands that are suitable for the operating system running on the first computer."*

See the Davis Abstract.

8. Claims 29 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al., U.S. Patent 5,742,829 in view of Selitrennikoff et al., U.S. Patent 6,209,089 (hereinafter referred to as Selitrennikoff), and further in view of Sakanishi, U.S. Patent 6,678,888.

**In regard to claim 29:**

*"a computer readable medium carrying computer executable instructions for implementing the method, the computer executable instructions when executed, performing the acts of:*

*automatically determining when a first computer is added to the data processing system, the first computer comprising a natural language and a processor running an operating system;"*

Davis discloses software installation on a first computer comprising a natural language and a processor running a functional operating system (Abstract), and also detects when a computer logs on and updates the software if necessary regardless if the first computer is new or not (column 2, lines 15 – 66), but does not explicitly teach that a new computer is detected as a new computer. However, Selitrennikoff explicitly discloses during a preliminary connection, a system that identifies new hardware components on a client and reports the configuration to the server in order to configure the client software properly (Abstract; column 51 line 51, to column 16, line 6). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the teaching of Davis, which automatically installs software on heterogeneous clients, with the explicit checking of new client hardware as taught by Selitrennikoff, because the combination allows the Davis invention to determine specifically if a

Art Unit: 2124

new client exists allowing client computers to be booted and automatically reconfigured regardless of changes made to the hardware components as taught by Selitrennikoff at column 2, lines 54 – 57.

*"identifying a stored edition of software, at a second computer, that is particular to the natural language, the processor, and the operating system of the first computer;"*

See Davis Abstract.

*"identifying stored preferences controlling installing the stored edition of the software onto the first computer; and"*

See Davis column 1, lines 53 – 65 and column 12, lines 32 – 45.

*"automatically installing only the edition of the software onto the first computer directly from the second computer utilizing commands that are suitable for the operating system running on the first computer and based upon the stored preferences."*

See Davis Abstract.

**In regard to claim 30,** incorporating the rejection of claim 29:

*"...wherein the computer readable medium further carries computer executable instructions for performing the act of automatically starting, by the second computer, the installed edition of the software on the first computer."*

See column 2, lines 45 – 67; column 16, lines 24 – 27.

**In regard to claim 31,** incorporating the rejection of claim 29:

*"...wherein the computer readable medium further carries computer executable instructions for performing the act of delivering the edition of the software to a third computer, the third computer installing only the edition of the software onto the first computer directly from the third computer utilizing commands that are suitable for the*

*operating system running on the first computer and based upon the stored preferences."*

Davis discloses a first computer configured to receive software (column 2, lines 15 – 66).

It is disclosed that the server (second) computer automatically determines when to install software on the client (a first computer) that is stored in the second computer, but neither Davis nor Selitrennikoff discloses a third computer that installs software to the first computer.

However, Sakanishi discloses a third computer wherein the software is distributed to a first computer via a third computer (Abstract; column 17, lines 35 – 58). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the teaching of Davis, which automatically installs software on heterogeneous clients, and in particular clients that are newly added to the system as taught by Selitrennikoff, further combined with the distributed software updating system as taught by Sakanishi, because the combination provides an efficient means to provide software to a system while simplifying the work of the user/administrator by reducing the update time as taught by Sakanishi at column 2, lines 43 – 48, and allows a distinction to be made when a computer is newly added as taught by Selitrennikoff.

**In regard to claim 32,** incorporating the rejection of claim 29:

*"...wherein the computer readable medium further carries computer executable instructions for performing the act of periodically determining when the first computer is added to the data processing system."*

See the Davis Abstract.

**In regard to claim 33,** incorporating the rejection of claim 29:

*"...wherein the computer readable medium further carries computer executable instructions for performing the act of determining when the first computer is added to*

*the data processing system in accordance with a predetermined time set by an administrator of the data processing system."*

Davis discloses response to input of the administrator (column 10, lines 26 – 28).

**In regard to claim 34,** incorporating the rejection of claim 29:

*"...wherein the computer readable medium further carries computer executable instructions for performing the act of determining when the first computer is added to the data processing system in accordance with an instruction of an administrator."*

Davis discloses response to input of the administrator (column 10, lines 26 – 28).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent 6,119,186 to Watts et al., regarding detection of changing environmental conditions in a computer system.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Shrader whose telephone number is (703) 305-8046. The examiner can normally be reached on M-F 08:00-16:30.

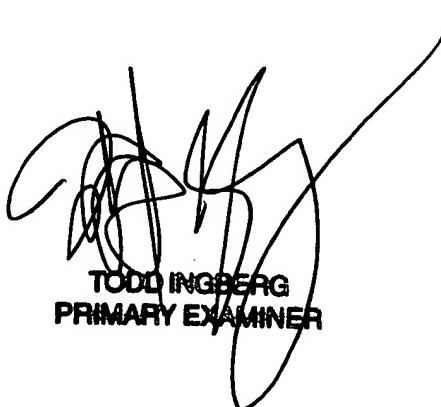
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (703) 305-9662. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2124

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lawrence Shrader  
Examiner  
Art Unit 2124

19 April 2004



TODD INGBERG  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "TODD INGBERG", is overlaid by a printed name "TODD INGBERG" and title "PRIMARY EXAMINER". The signature is fluid and cursive.